fourth amendment values because they are random. They do not rely upon the discretion of the police officer to choose whom to stop and search—all are treated the same. Roadblocks, in the Supreme Court's words, avoid the standardless and unconstrained discretion present in individual stops. [*Delaware* v. *Prouse*, 440 U.S. 648, 661 (1979).]

I presume that Judge Barkett also would find fault with the metal detectors at airports and government buildings, or stops at the border, or customs searches, because even though they are all minimal intrusions into an individual's privacy, they subject everyone to a search without a warrant. Fortunately, Judge Barkett's feelings on this point conflict with Supreme Court precedent, and even though Judge Barkett seems to have always had trouble following the precedent of the Supreme Court, most other Federal judges do not, including the Republican-appointed judges on the eleventh circuit.

Merrett is not the only case in which Judge Barkett has been willing to place obstacles before our Nation's war on drugs, a war in which the administration has been AWOL—absent without leadership. In Chandler versus Miller, a January 1996 case, Judge Barkett again dissented in a case involving drugs and search and seizure. Georgia passed a statute requiring drug testing of political candidates and nominees for State offices. In cases such as *National Treasury Employees* v. *Von Raab* [489 U.S. 656 (1989)], *Skinner* v. *Railway Labor Executives' Association* [489 U.S. 602 (1989)], and last Term's *Vernonia School District* v. *Acton* [115 S.Ct. 2386 (1995)], the Supreme Court has declared that courts must balance the individual's privacy expectations against the Government's special interests in preventing drug use in that area.

In these cases, the Supreme Court has upheld drug testing of drug agents, of railway workers, and of high school athletes. For Judge Barkett, however, these were all narrow exceptions to a general rule in her own mind that no one should be subject to drug testing, including candidates for high public office. In her mind, controlling drug use among the highest public officials involves no immediate or direct threat to public safety, and that there is no showing that waiting to obtain a warrant based on individualized suspicion would cause any dire consequences. In Judge Barkett's words, ''[t]here is nothing so special or immediate about the generalized governmental interests involved here to as to warrant suspension'' of the warrant requirement.

But as the majority correctly held, the Government's interest in preventing drug use among its highest public officials is a powerful one. In the majority's words, the people of a State place their most valuable possessions, their liberty, their safety, the economic well-being, ultimate responsibility for law enforcement, in the hands of their elected and appointed officials, and the nature of high public office demands the highest levels of honesty, clear-sightedness, and clear-thinking. We permit drug testing of drug agents; we permit drug testing of railroad engineers; we even permit drug testing of high school athletes. Judge Barkett would have us believe that the damage that would be caused by drug use in these situations is far greater than that caused by drug use by legislators, by executive branch officials, and by judges. Judge Barkett's reasoning strikes me as unreasonable, and her efforts again appear designed to restrict the tools that our society can use to combat drug use, even in the face of contrary Supreme Court precedent.

Perhaps Judge Barkett's position on the fourth amendment in Chandler was a reasonable one. But no one can claim that her further statements in that case had any grounding in Federal constitutional or statutory law. Not only did Judge Barkett argue that the Georgia statute was an illegal search, she also argued that it was a violation of the candidates' first amendment rights.

I am not making this up.

If you don't believe me, Mr. President, listen to her own words. ''This statute is neither neutral nor procedural, but, * * * attempts to ensure that only candidates with a certain point of view qualify for public office.'' Judge Barkett interprets the drug testing requirement as an attempt to ''ban[] from positions of political power not only those candidates who might disagree with the current policy criminalizing drug use, but also those who challenge the intrusive governmental means to detect such use among its citizenry.''

Such reasoning reeks of the very worst of the moral relativism that characterizes liberal judicial activism. Judge Barkett appears to believe that if one is in favor of drug legalization or against drug testing, why, one must be a drug user. In fact, Judge Barkett appears to believe that drug use is an ideology and that drug testing is, in her words, ''a content-based restriction on free expression.'' If that is so, then does Judge Barkett believe that any effort to prevent drug use is an attempt to suppress the first amendment rights of drug users, and that drug use itself is a form of expression?

Mr. President, this is the 1990's, not the 1960's; America has not been transformed into a Woodstock from sea to shining sea. The first amendment does not protect illegal, harmful conduct, and it does not permit people to plan and encourage illegal conduct. Although this administration has been absent without leadership in the drug area, the American people and the Congress are not. We are determined to prevent drugs from ruining the lives of our young people, and the tolerant attitude of some of the Clinton administration's nominees, who equate drug use with protected first amendment expression, will not stand in our way.

Why is this so important? As a practical matter, the Senate gives each president deference in confirming judicial candidates. A Republican President would not nominate the same judges that a Democrat would, and vice versa. The President has been elected by the whole country and, while this President has been unable to put all of his choices on the bench, there are hundreds of judgeships to fill in order to keep the justice system functioning.

Indicia of judicial activism or a soft-on-crime outlook are not always present in a nominee's record. But, in the cases of Judge Sarokin and Barkett, there were crystal clear signs of their activist mindsets. Yet the President appointed these two judges and pushed hard successfully to get them through the Judiciary Committee and the Senate, despite opposition, largely on this side of the aisle.

We can now view the products of the President's choices. We do not just have two trial judges, Judges Baer and Beaty, who have trouble understanding the role of the Federal courts in law enforcement and in the war on crime. We now can see that President Clinton has sent liberal activists to the Federal appellate courts, where their decisions bind millions of Americans.

Judge Sarokin's opinions, if they garner a majority, are the law in Pennsylvania, New Jersey, and Delaware. Judge Barkett's opinions, if they garner a majority, are the law in Florida, Georgia, and Alabama. Criminals whom they would set free on technicalities can strike again, anywhere, anytime. This makes all Americans potential victims of these judges and their soft-on-crime outlook.

The general judicial philosophy of nominees to the Federal bench reflects the judicial philosophy of the person occupying the Oval Office. We, in Congress, have sought to restore and strengthen our Nation's war on crime and on drugs and to guarantee the safety of Americans in their streets, homes, and workplaces. For all of the President's tough-on-crime talk, his judicial nominations too often elevate the rights of the criminal above the rights of the law-abiding citizen, and undermine safety in our streets, in our homes, and in our workplaces.

The PRESIDING OFFICER. Under the previous order the Chair now recognizes the Senator from North Carolina to speak for up to 10 minutes as in morning business.

Mr. FAIRCLOTH. Mr. President, I thank the Chair.

(The remarks of Mr. FAIRCLOTH pertaining to the submission of Senate Resolution 237 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

PRIVILEGE OF THE FLOOR

Mr. GLENN. Mr. President, I ask unanimous consent that Allegra Cangelosi and Patricia Cicero be permitted privileges of the floor while I introduce this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. GLENN and Mr. LEAHY pertaining to the introduction of S. 1660 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska is recognized to speak for up to 15 minutes.

THE FOREIGN RELATIONS REVITALIZATION ACT RELATING TO TAIWAN

Mr. MURKOWSKI. Mr. President, last night we had several hours of debate and that debate was around the issue of the Foreign Relations Revitalization Act relating to Taiwan. As we addressed the disposition of the conference report, this particular portion received a good deal of scrutiny. There were a lot of words spoken, a lot of technical interpretations. What I am going to do today is simplify that debate by referring to the Taiwan Relations Act as the law of the land. I will also give a brief explanation of the section that was the subject of the debate, but I will use the actual factual language, as well as definitions, not just personal interpretations.

I was surprised by the debate surrounding one provision in particular, and that was section 1601, which states that sections 3(a) and 3(b) of the Taiwan Relations Act supersede any provision of the 1982 joint communique between the United States and China.

I was surprised by the debate because, obviously, a number of people seem to be cloudy on just what ''supersede'' means. Allow me to clear up any misconceptions of that term. The Oxford dictionary refers to the term ''supersede'' specifically as ''overrides, takes precedence over.'' That definition seems pretty clear to me, Mr. President.

The administration indicated it is going to veto the entire conference report, in part because of opposition to section 1601, even though that section only restates reality.

In order to enlighten some of my colleagues on this issue, I have a chart here. I would like to refer to the chart. This is April 10, 1979, section 3(a):

> . . . [T]he United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.''

Section 3(b):

> The President and the Congress shall determine the nature and quantity of such defense articles and defense services based solely upon their judgments of the needs of Taiwan. . . .

It could not be any clearer, ''solely on their judgments of the needs of Taiwan.'' That is to say, the President and the Congress shall determine the nature, quantity of such defense articles, et cetera. It is crystal clear. The issue is the interpretation of the United States-China joint communique. The previous reference was the law of the land. This is a communique. In the communique, August 17, 1982, the administration pledged, ''to reduce gradually its sales of arms to Taiwan, leading over a period of time to a final resolution.'' Paragraph 6.

This pledge to reduce arms sales over time, for those of us who have labored in this vineyard and those in the defense community, we recognize this as the ''bucket,'' so to speak; that is, after the executive branch implemented the pledge by decreasing the amount of defensive goods and services that would be sold to Taiwan. That is readily understood. That was the specific intent.

This is the communique, the other is the law of the land. But you can see the difference. Congress, and the President, clearly have the authority under the law of the land to designate and determine the nature and quantity of defensive arms provided to Taiwan.

Yesterday in the debate, several of my colleagues claimed that section 1601 nullified the entire basis of United States-China policy.

This simply is not true, Mr. President. I should know, this was my legislation. I know what the legislative intent was. As the original author of this legislation, I know the intent of the legislation is simply to reassert the legal primacy of the Taiwan Relations Act as public law over a statement of policy, such as the joint communique.

It is this intent that so many of my colleagues on the other side, and evidently the State Department, are missing. It reasserts the legal primacy of the Taiwan Relations Act as public law over a statement of policy, such as the joint communique, if the two are in conflict. That puts the burden on the President and the Congress where it belongs.

For example, if the threat to Taiwan is increasing, defensive arms sales may need to go up, and this should not be arbitrarily limited by the bucket. It has not been in the past. The bucket is whether it is inside or outside, and we have seen sales outside. Prior administrations have followed the principle and practice, such as President Bush's decision to sell the F–16's to Taiwan, even though they were outside the dollar limits and, therefore, outside that bucket. It is referred to, basically, as decreasing in the amount of collective arms sales to Taiwan.

The point I want to make today is, more important, that Secretary Christopher, in a letter dated April 22, 1994, to me assured me that this administration's position is as previous administrations; the Taiwan Relations Act as public law takes legal precedent over the 1982 Joint United States-China Communique. That is the issue, does it take legal precedent or does it not? The Secretary of State said it did.

Let me make one more distinction, Mr. President. That communique I referred to, has never been ratified by Congress. The Taiwan Relations Act is the law of the land.

In referring to this letter of April 26, 1994, the Secretary provided that letter and asked me not to release it for the RECORD. I am going to honor that commitment.

But now the administration seems to say it is ready to veto the entire conference report, and one of the reasons, in part, is because of a provision that simply acknowledges their prior position. If they are going to veto it, that is their own business, but let us be up front about the veto, if other rationale is the driving force.

Why is this being selected? I do not know. Has the administration been pressured to change some of its positions? I am sending a letter to Secretary Christopher today asking him to clarify his position: Does the administration stand by the April 22, 1994, letter or not? If not, then why not? It is my hope to share that answer with my colleagues.

This is important, because many on the other side are very uncomfortable now as they recognize what the law of the land says and the fact the law of the land supersedes the communique if the two are in conflict. Very few people seem to have picked up on that difference and it's significance.

Some of my colleagues have asked why this provision was necessary and if it was. My response is simply this: it sets legal precedent. This is a reason I think my colleagues on both sides of the aisle will appreciate. Sometimes it is necessary to remind the executive branch that the Executive policies cannot ignore the law of the land, and that is where we are today. The Taiwan Relations Act is the law of the land.

So, Mr. President, this administration cannot ignore Taiwan's defensive needs nor the role of Congress in determining these needs, even if some in China demand it. That is what this legislation is really all about.

Some of my friends in this body may imply that this language somehow suggests that former President Reagan was wrong when he signed the communique. That is certainly not my interpretation, nor my my intention. But the reality is, this is 1996, not 1982, and this language dictates that if the threat to Taiwan is greater now than in 1982, arms sales may go up accordingly.

So that is where we are, Mr. President. I hope that sheds some light on the debate over this language. I simply stated what was actually written, and hope my colleagues on the other side of the aisle will recognize this.

(Mr. CRAIG assumed the chair.)

THE BUDGET

Mr. MURKOWSKI. Mr. President, I would like to make reference, in my remaining time, to some facts on the budget.

It is rather curious, but in the last 13 months, President Clinton has sent up